



# Attorney General

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Robert R. Corbin

January 10, 1990

Mr. Charles L. Miller, Director  
Arizona Department of Transportation  
206 South Seventeenth Street  
Phoenix, Arizona 85007

Re: 190-006 (R88-140)

Dear Mr. Miller:

On October 8, 1985, the voters of Maricopa County approved a measure providing for a transportation excise tax to be in effect for twenty years. You ask whether an extension of this tax beyond the twenty-year period would require voter approval. We conclude the answer is no.

The Legislature, in Laws 1985 (1st Reg. Sess.) Ch. 308, § 30, directed the Board of Supervisors of Maricopa County to call a countywide special election for the purpose of approving a countywide transportation excise tax. This provision provides in relevant part:

A. The board of supervisors of a county with a population of one million two hundred thousand or more persons shall, by resolution, order and call a countywide special election to be held no earlier than September 10, 1985 and no later than October 31, 1985 for the purpose of approving a countywide transportation excise tax as provided by this act. The board of supervisors shall specify on the ballot the rate of tax applicable to the amount or volume of business activity subject to the tax determined by values, gross proceeds of sale or gross income, as the case

may be, and the length of time the tax is to be in effect. The rate of tax shall not exceed the maximum percent prescribed in section 42-1482, Arizona Revised Statutes, as added by this act, and the length of time the tax would be in effect shall not exceed twenty years. Such a tax must be approved by a majority of qualified voters voting at the election.

Laws 1985 (1st Reg. Sess.) Ch. 308, § 30(A) (emphasis added). An election pursuant to this provision was held on October 8, 1985 and a majority of qualified electors voting at that election approved Proposition 300, which provided:

A. YES (Approved) vote shall have the effect of approving the transportation excise tax to accumulate trust funds for the design, land acquisition and construction of control-access highways which are also shown as freeways, expressways and parkways on the Maricopa Association of Government's Regional Transportation Plan and for regional public transportation services.

Proposition 300 also provided that "[T]he tax will start January 1, 1986 and be in effect for twenty years." (emphasis in original).

In determining the power of the Legislature to extend the tax beyond twenty years we must first determine whether Proposition 300 is a referendum measure.

Although the excise tax issue was placed before the qualified electors of Maricopa County, the ballot proposition, in our opinion, is not a referendum measure.<sup>1/</sup> Article IV,

<sup>1/</sup> Rather, we view the legislative requirement that the excise tax be approved by the electors of Maricopa County to be a condition precedent to the authority granted to the County to impose the tax. The fact that the Legislature also limited the County both as to the amount of tax it could impose and as to the term the county tax could be in place convinces us there was no unconstitutional delegation of legislative powers. See Laws 1985 (1st Reg. Sess.) Ch. 308, § 30(A); see also Lake Havasu City v. Mohave County, 138 Ariz. 552, 559, 675 P.2d 1371, 1378 (App. 1983) ("All that is required for the proper delegation of such discretion is that it be defined with sufficient clarity to enable the agency or board to know their legal bounds.")

part 1, section 1, sub-paragraph 3 of Arizona's Constitution provides that "the Legislature . . . may order the submission to the people at the polls of any measure, or item section, or part of any measure, enacted by the Legislature." (Emphasis added.) The term "people" as used in our constitution refers, in our opinion, to the people of the whole State.<sup>2/</sup> Cf., Anaconda-Deer Lodge County v. Lorello, 592 P.2d 1381 (Mont. 1979); Solon v. State, 114 S.W. 349 (1907) and Dupee v. Swigert, 127 Ill. 494, 21 N.E. 622 (1889) (term "people" as used in state constitution means people of the whole state).

Having addressed the issue of whether Proposition 300 is a referendum measure we now consider whether the Legislature may extend the excise tax. In Ariz. Att'y Gen. Op. 187-013 we stated:

The authority of the legislature is contained in art. IV of the Arizona Constitution which provides in pt. 1, § 1 that "[t]he legislative authority of the State shall be vested in a Legislature," and sub-paragraph 14 of which provides "[t]his section shall not be construed to deprive the Legislature of the right to enact any measure." (Emphasis added.) The Arizona Supreme Court has interpreted these provisions:

The generally accepted doctrine is that except for those things necessarily inhibited by the Federal or state constitution, the state legislature may pass any act, because the whole power not prohibited by the state and Federal constitutions is retained in the people and their elected representatives in the State.

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<sup>2/</sup>The referendum power also is reserved to the qualified electors of every county as to all county legislation. Ariz. Const. art. IV, pt. 1, § 1(8). However, Laws 1985 (1st Reg. Sess.) Ch. 308, § 30 is a state measure and not a county ordinance.

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Earhart v. Frohmler, 65 Ariz. 221, 224, 178  
P.2d 436, 437-438 (1947) (citations omitted).

Neither the Federal or State constitutions prohibit the Legislature from imposing excise taxes. In fact, the Arizona Constitution specifically provides that the Legislature may provide for the levy and collection of excise taxes. See Ariz. Const. art. IX, § 12. Additionally, the Legislature may impose as many such taxes as it sees fit. Miners & Merchants Bank v. Board of Supervisors, 55 Ariz. 357, 361, 101 P.2d 461, 463, (1940); see also Consolidated Motors, Inc. v. Skousen, 56 Ariz. 481, 488, 109 P.2d 41, 44 (1941) (Legislature's taxation power is practically plenary). We, therefore, conclude that the Legislature may extend the County's authorization to levy and collect the excise tax beyond the initial twenty-year period approved by the County electorate.

Sincerely,



BOB CORBIN  
Attorney General

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